

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Francisco Vidal,
5 Plaintiff
6 v.
7 Dacken, et al.,
8 Defendants
9

2:17-cv-02729-JAD-CWH
Order Dismissing Case

10 Pro se plaintiff Francisco Vidal brings this civil-rights action against several correctional
11 officers and other personnel at the Southern Desert Correctional Center for allegedly throwing
12 him on the back of a flatbed golf cart, pinning their knees into his back, causing him to suffer an
13 anxiety-induced asthma attack, failing to provide “breathing treatment,” and putting him on
14 suicide watch after he stuck his head through the bars of his bunk and hanged.¹ Vidal was
15 previously ordered to file a completed application to proceed *in forma pauperis* or pay the filing
16 fee within 30 days.² That 30-day deadline has now expired, and Vidal has failed to comply or
17 otherwise respond to the court’s order.

18 District courts have the inherent power to control their dockets and, “[i]n the exercise of
19 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.³ A
20 court may dismiss an action with prejudice based on a party’s failure to prosecute an action,
21 failure to obey a court order, or failure to comply with local rules.⁴ In determining whether to
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23 ¹ ECF No. 1-1.

24 ² ECF No. 4.

25 ³ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

26 ⁴ *See Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
27 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
28 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439,

1 dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with
2 local rules, the court must consider several factors: (1) the public's interest in expeditious
3 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
4 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
5 availability of less drastic alternatives.⁵

6 I find that the first two factors weigh in favor of dismissal. The risk-of-prejudice factor
7 also weighs in favor of dismissal because a presumption of injury arises from the occurrence of
8 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.⁶ The fourth
9 factor is greatly outweighed by the factors in favor of dismissal, and a court's warning that failure
10 to comply with a court order will result in dismissal satisfies the "consideration of alternatives"
11 requirement.⁷ When Vidal was ordered to file a pauper application or pay the filing fee within 30
12 days, he was warned that failure to do so would "result in dismissal of this action,"⁸ and that
13 warning was sufficient.

14 Accordingly, IT IS HEREBY ORDERED that **this action is DISMISSED without**
15 **prejudice** to Vidal's ability to file his claims again in a new, separate case because of his failure
16 to comply with my October 30, 2017, order.
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21 1440–41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs
22 to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
23 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

24 ⁵ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130; *Ferdik*,
25 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.


26 ⁶ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

27 ⁷ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

28 ⁸ ECF No. 4 at 2.

The Clerk of Court is directed to enter judgment accordingly and CLOSE THIS CASE.

DATED: December 13, 2017.


U.S. District Judge Jennifer A. Dorsey